

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**B.P.J., by her next friend and mother,  
HEATHER JACKSON,  
Plaintiff,**

**v.**

**Civil Action No. 2:21-cv-00316  
Honorable Joseph R. Goodwin, Judge**

**WEST VIRGINIA STATE BOARD OF EDUCATION,  
HARRISON COUNTY BOARD OF EDUCATION,  
WEST VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION, W. CLAYTON BURCH  
in his official capacity as State Superintendent, and  
DORA STUTLER in her official capacity as  
Harrison County Superintendent,  
Defendants,**

**And**

**LAINIEY ARMISTEAD,  
Defendant-Intervenor.**

**MEMORANDUM IN SUPPORT OF  
WVSSAC'S MOTION IN LIMINE TO PRECLUDE USE  
OF HARRISON COUNTY'S 30(B) TESTIMONY OUTSIDE SCOPE**

Now comes West Virginia Secondary School Activities Commission (WVSSAC), by counsel, Roberta F. Green, Kimberly M. Bandy, Shannon M. Rogers and Shuman McCuskey Slicer PLLC, and, pursuant to Federal Rules of Evidence 105, 401-03, and Federal Rules of Civil Procedure Rule 30(b), moves the Court for an order in *limine* to preclude use of Superintendent Dora Stutler's testimony beyond the scope of her designation when and to the extent that said testimony addresses WVSSAC. Superintendent Stutler was deposed as the 30(b)(6) witness representing the Harrison County Board of Education on a portion of the topics identified by Plaintiff.<sup>1</sup> However, in the course of the deposition, several topics designated for a different 30(b)

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<sup>1</sup> See, e.g., ECF No. 184. See also ECF No. 289-17.

witness were addressed to Superintendent Stutler over the objections of counsel.<sup>2</sup> Thereafter, Superintendent Stutler testified not only to WVSSAC operations incorrectly,<sup>3</sup> but also testified to them in a manner that was later contradicted by the County's 30(b) witness designated to address the issue.<sup>4</sup> Superintendent Stutler also was invited to speculate as to WVSSAC operations under HB 3293,<sup>5</sup> which, by order of this Court has not gone into effect at this time (such that any procedures for any individual or entity have yet to be determined).<sup>6</sup> The inconsistencies and complications with Superintendent Stutler's testimony were noted and somewhat clarified at that time:

21 Q Hello, Superintendent Stutler. This is

22 Roberta Green with WVSSAC –

\* \* \*

2 Q -- and I'm here on behalf of WVSSAC, and I

3 recollect that you had testified to some issues

4 relative to their eligibility rules, their processes

5 and any processes they have in place relative to 04:58:15

6 3293.

7 Do you recollect that testimony?

8 A Yes.

9 Q And as you sit here, do you actually defer to

10 WVSSAC as probably more informed and knowledgeable 04:58:31

11 as to their processes?

12 A Repeat that question.

13 Q Would you defer to WVSSAC as being more

14 knowledgeable about WVSSAC policies --

15 MS. REINHARDT: Objection. 04:58:48

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<sup>2</sup> ECF No. 289-17 at 80-81:

19 MS. DENIKER: Well, I object to that because

20 I believe that topic 8 is in the context of House 03:06:06

21 Bill 3293. You're asking general questions with

22 regard to the relationship between Harrison County

23 Board of Education and the WVSSAC, which I believe

24 are within the scope of topic 10. I -- I understand

25 topic 8 to be in the context solely of House Bill 03:06:23

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1 3293.

<sup>3</sup> ECF No. 289-17 at 143 (testifying to an 'automatic pull' from WVEIS).

<sup>4</sup> ECF No. 289-17 at 214.

<sup>5</sup> ECF No. 289-17 at 82-83;

<sup>6</sup> ECF No. 67.

16 MS. DENIKER: Objection to the form.

17 BY MS. GREEN:

18 Q -- than you would be?

19 A Yes.

\* \* \*

5 BY MS. GREEN: 04:59:38

6 Q All right. Well, you know, would you

7 defer -- Superintendent, would you defer to WVSSAC

8 as being potentially more knowledgeable about their

9 rules, how their rules work and --

10 MS. REINHARDT: Same objection. 04:59:48

11 BY MS. GREEN:

12 Q -- the preparations are pursuant to 3293, if

13 any?

14 MS. REINHARDT: Same objection.

15 MS. DENIKER: Objection to the form. 05:00:00

16 THE WITNESS: If you're saying they're more

17 knowledgeable, yes.<sup>7</sup>

Whereas a 30(b) witness must be prepared to testify to what is reasonably known by a corporate or other entity,<sup>8</sup> the parties effected by topics and testimony beyond the designee's reasonable ken should not be held to that testimony.<sup>9</sup> Whereas WVSSAC could undertake the same questioning at trial, inviting the witness to defer to WVSSAC yet again, the less confusing approach and that most likely to avoid waste of the Court's and advisory jury's time would be to limit the 30(b) witness's testimony as indicated at the deposition and above.

Therefore, for these reasons, WVSSAC requests an order in *limine*, whereby the Harrison County Board of Education would defer to WVSSAC to testify to its rules, regulations and internal processes generally and as relates to HB 3293.

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<sup>7</sup> ECF No. 289-17 at 151-52.

<sup>8</sup> *Zeng v. Elec. Data Sys. Corp.*, 2007 U.S. Dis. Lexis \*13.

<sup>9</sup> Fed. R. Evid. 105.

**WEST VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION,  
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**/S/ Roberta F. Green**

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**CERTIFICATE OF SERVICE**

I hereby certify that I, Roberta F. Green, have this day, the 22nd day of June, 2022, served a true and exact copy of the foregoing with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

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